THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 28

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte JAMES U. LEMKE, A. BRUCE MANILDI,
JAMES C. CROSBY and CHARLES J. SPATAFORE

_____

Appeal No. 1997-3933
Application No. 08/193,179

_____

ON BRIEF

_____

Before HAIRSTON, KRASS, and DIXON, **Administrative Patent Judges**.

DIXON, **Administrative Patent Judge**.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-7, 11-14, 23-37, 39-43 and 45-69, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellants' invention relates to an arcuate scanning tape drive. An understanding of the invention can be derived from a reading of exemplary claims 1 and 60, which is reproduced below.

1. An apparatus for reading information on a magnetic tape, including:

a frame;

means in the frame for receiving a container holding a magnetic tape and for positioning the magnetic tape at a reading location;

transport means in the frame for engaging the magnetic tape and for advancing the magnetic tape longitudinally past the reading location;

a rotating transducer carrier;

transducer means on the transducer carrier for reading information on the magnetic tape;

means for positioning the rotating transducer carrier adjacent the reading location to rotate on an axis of rotation which passes through the magnetic tape near the reading location, said axis of rotation corresponding substantially to the center of a circular transducing path followed by the transducer means when the transducer carrier rotates;

means for rotating the transducer carrier to read a sequence of arcuate information tracks on the magnetic tape; and

control means connected to the transducer means, to the transport means, and to the means for positioning and responsive to servo information in the arcuate information tracks for aligning the transducer means with the arcuate information tracks by adjusting:

the speed of advancement of the magnetic tape; and

the location of the transducer carrier with respect to the magnetic tape at the reading location.

60. A magnetic tape for storing data for access by an arcuately scanning tape drive, comprising:

a magnetic tape with two edges and a longitudinal center line; and

data stored in a plurality of arcuate tracks on said magnetic tape, each arcuate track of the plurality of arcuate tracks extending in an arc from a first edge to a second edge of said magnetic tape, across the center line, said data including servo signals for causing alignment of an arcuately-scanning tape drive transducer with arcuate tracks on said magnetic tape.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Hertrich	3,576,553	Apr. 27, 1971
van Slageren	4,166,283	Aug. 28, 1979
Sokolik et al. (Sokolik)	4,646,175	Feb. 24, 1987
Katou et al. (Katou)	5,206,771	Apr. 27, 1993 (Filed Aug. 30, 1990)

Admitted Prior Art in the specification at pages 3-5

Claims 60-69 stand rejected under 35 U.S.C. § 102 as being unpatentable over Admitted Prior Art. Claims 1-3, 5, 7 and 29-34 stand rejected under 35 U.S.C. § 103

as being unpatentable over Admitted Prior Art in view of van Slageren. Claims 4 and 6 stand rejected under 35 U.S.C. § 103 as being unpatentable over Admitted Prior Art and van Slageren in view of Katou. Clams 11-14 stand rejected under 35 U.S.C. § 103 as being unpatentable over Admitted Prior Art and van Slageren in view of Sokolik. Claims 23-28, 35-37, 39-43 and 45-49 stand rejected under 35 U.S.C. § 103 as being unpatentable over Admitted Prior Art in view of Sokolik. Claims 50-59 stand rejected under 35 U.S.C. § 103 as being unpatentable over Admitted Prior Art in view of Hertrich.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the examiner's answer (Paper No. 27, mailed Feb. 24, 1997) for the examiner's reasoning in support of the rejections, and to the appellants' brief (Paper No. 26, filed Dec. 27, 1996) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

With respect to both rejections under 35 U.S.C. §§ 102 and 103, the examiner has the initial burden of setting forth a ***prima facie*** case of anticipation and obviousness of the claimed subject matter. Here, we find that the examiner has set forth neither a ***prima facie*** case of anticipation nor obviousness of the claimed subject matter.

The examiner relies solely upon the teachings of the admitted prior art to teach the storage of information in an arcuate pattern on a memory medium. Appellants argue that this admission does not address problems in this prior art of a lack of servo control information therewith to control the speed and/or position of the transducer. (See brief at pages 7-8.) We agree with appellants. The examiner maintains that the servo data is merely non-functional descriptive material or an intended use of the data. (See answer at page 4.) We disagree with the examiner. The servo information stored on the arcuate tracks is functional material which is used by the control means to adjust the operation of the reader. The examiner has not shown that the admitted prior art teaches "said data including servo signals for causing alignment of an arcuately-scanning tape drive transducer with arcuate tracks on said magnetic tape" as

The examiner has not shown that the admitted prior art teaches or fairly suggests the storage or use of servo information to control the arcuate track reader/writer/system/method. The examiner has not relied upon any of the other prior art references to teach or suggest the storage and use of servo information with respect to arcuate tracks. Appellants argue that none of the other prior art references applied by the examiner teach or suggest the servoing technique for arcuate data tracks. (See answer at page 11.) We agree with appellants. Therefore, we will not sustain the rejection of independent claims 1, 29, 41, 42, 45, 50 and 56 since each contains limitations to the servoing technique.

Additionally, with respect to claims 1 and 29, we find that van Slageren does not teach or suggest the storage and use of servo data, but rather merely teaches that it is desirable to reduce variations in tension and stretch of the tape.

With respect to claims 50-59 and Hertrich, appellants argue that Hertrich does not teach or suggest the use or storage of servo control information in the arcuate information tracks. (See brief at page 17.) We agree with appellants.

With respect to independent claims 23 and 35, these claims do not include a similar limitation with respect to the servoing technique. Appellants argue that Sokolik does not teach or suggest that the tracks extend transverse to the longitudinal center line of the tape as required by claims 23 and 35. We agree with appellants. The examiner maintains that "[a]pplying the data structure depicted in Figure 1 of Sokolik, in combination with the other servo teachings would yield the claimed five field data structure." (See answer at page 6.) We disagree with the examiner. From the examiner's explanation of the fields of Sokolik in the final rejection at page 7, he has reversed the direction of the tracks whereas Sokolik teaches the storage of the track identification along the longitudinal center line of the track which is parallel to the side of the tape and not transverse thereto. Moreover, the examiner maintains that "there would have been no critical difference in the placement of the data in any of these different positions on the tape." (See final rejection at page 7.) We disagree with the examiner's unsupported conclusion. Therefore, we will not sustain the rejection of independent claims 23 and 35 and their respective dependent claims.

CONCLUSION

To summarize, the decision of the examiner to reject claims 60-69 under 35 USC § 102 and claims 1-7, 11-14, 23-37, 39-43 and 45-59 under 35 U.S.C. § 103 is reversed.

REVERSED

KENNETH W. HAIRSTON Administrative Patent Judge	)
ERROL A. KRASS Administrative Patent Judge	) BOARD OF PATENT) APPEALS) AND) INTERFERENCES
JOSEPH L. DIXON Administrative Patent Judge	)

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